

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
AT KNOXVILLE

KEVIN EDWARD CRESS,

Plaintiff,

v.

JOSH RUSSEL,  
REBECCA RUSSEL, and  
ANGIE McDONALD,

Defendants.

No.: 3:23-CV-121-KAC-DCP

**ORDER ADOPTING REPORT & RECOMMENDATION AND DENYING MOTION  
FOR SUBPOENAS**

Before the Court is United States Magistrate Judge Debra C. Poplin’s “Report and Recommendation” (“Report”) entered on June 6, 2023 [Doc. 5]. On April 10, 2023, Plaintiff filed an Application to Proceed in District Court without Prepaying Fees or Costs (“Application”) [Doc. 1]. Plaintiff did not include a certified copy of his trust fund account for the past six (6) months in his Application as is required by the Prison Litigation Reform Act of 1995 [*See id.*]. So, on April 12, 2023, the Court entered an Order giving Plaintiff thirty (30) days “to submit the necessary documents” [Doc. 4 at 1]. The Court warned Plaintiff that “if he fails to fully timely comply with this order, the Court shall presume the Plaintiff is not a pauper, shall assess the full amount of fees, and shall order the case dismissed for want of prosecution” [*Id.* at 1-2]. Plaintiff failed to comply with the Court’s April 12 Order [*See* Doc. 5 at 1].

In her Report, Judge Poplin recommends that the Court (1) deny Plaintiff’s Application [Doc. 1]; (2) give Plaintiff an additional twenty-one (21) days to pay the filing fee; and (3) advise Plaintiff that failure to comply will result in a dismissal of his case without prejudice [Doc. 5 at 1-]

2]. No Party has objected to the Report, and the time to do so has passed. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2).

After reviewing the record, the Court **ACCEPTS** and **ADOPTS** Judge Poplin's Report [Doc. 5] under 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b)(2). The Court **ORDERS** as follows:

- (1) The Court **DENIES** Plaintiff's Application to Proceed in District Court without Prepaying Fees or Costs [Doc. 1];
- (2) The Court **ORDERS** Plaintiff to pay the filing fee within twenty-one (21) days of entry of this Order; and
- (3) The Court **WARNS** Plaintiff that **failure to timely pay the filing fee will result in dismissal of his case without prejudice.** *See* Fed. R. Civ. P. 41(b); *Rogers v. City of Warren*, 302 F. App'x 371, 375 n.4 (6th Cir. 2008) ("Although Rule 41(b) does not expressly provide for a *sua sponte* dismissal (the rule actually provides for dismissal on defendant's motion), it is well-settled that the district court can enter a *sua sponte* order of dismissal under Rule 41(b)." (citing *Link v. Wabash R.R.*, 370 U.S. 626, 630 (1962))); E.D. Tenn. L.R. 83.13 ("The failure of a *pro se* plaintiff to timely respond to an order . . . may result in dismissal of the case or other appropriate action.").

In addition to the above, Plaintiff has recently filed a Motion for Issuance of Subpoenas [Doc. 6]. It is not appropriate to issue any subpoenas at this stage in the litigation, especially given Plaintiff's failure to comply with prior Court orders. *See* 28 U.S.C. §§ 1915(e)(2), 1915A. Accordingly, the Court **DENIES** Plaintiff's Motion for Issuance of Subpoenas [Doc. 6].

IT IS SO ORDERED.



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KATHERINE A. CRYTZER  
United States District Judge